United Nations **AT**

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMISTRATIVE TRIBUNAL

Judgement No. 949

Case No. 966: AFAWUBO

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, Vice-President, presiding; Mr. Kevin Haugh; Ms. Marsha A. Echols;

Whereas, on 30 December 1998, Mensah Novito Afawubo, a staff member of the Office of the United Nations High Commissioner for Refugees (hereinafter referred to as UNHCR), filed an application, in which he requested, in accordance with article 11 of the Statute of the Tribunal, the interpretation and revision of Judgement No. 884, rendered by the Tribunal on 4 August 1998;

Whereas the application contained pleas which read, in part, as follows:

"SECTION II. PLEAS

...

12. ... in view of recent events which I became aware of last 28 October 1998, **after** Judgement No. 884, and duly brought to the Tribunal's knowledge on 19 November 1998 ..., events relating to a situation which, today, represents the self-evident culminating point of the admittedly long-standing financial mismanagement I drew attention to in 1993 in the Conakry UNHCR Office but with my call not being heeded, I request the Tribunal to revise its Judgement No. 884 and *rule conclusively, as*

regards my said reassignment from Conakry in 1994, that UNHCR's Administration in fact acted inappropriately by simply removing me from the duty station without the necessary prior investigation into the prevailing financial malpractices I then vainly sought to expose, and which have now finally come to light.

13. As far as compensation is concerned regarding reparation of the injustice of that victimizing reassignment, unless the Tribunal itself decides to award me some kind of special damages ..., I wish, for my part, to reiterate that I request no monetary compensation but, rather, UNHCR Administration's *post factum* written acknowledgement that it indeed acted inappropriately in precipitately reassigning me away from a duty station without having carried out, as would have been expected of any responsible Administration, an inquiry into my complaints of being victimized for my exposure of misuse of the Organization's financial resources. But, in the event of such discretionary award of special damages by the Tribunal, the indispensable condition for my acceptance thereof would be that those officials then responsible for the serious negligence constituted by the failure to investigate the matter, be made to bear if but a symbolic part of the said damages rather than the Organization alone being requested to pay the total amount."

Whereas on 4 June 1999, the Applicant submitted an additional document expanding on his plea for compensation as follows:

"...

3. In view of the [remand of my case ... to the Geneva Joint Appeals Board (JAB)] pursuant to article 9, paragraph 2, of the Statute of the [Administrative Tribunal], I hereby request payment of compensation ..., on grounds of the prejudice caused to me as a result of the *procedural delay* in the definitive clarification of my career development situation ...

..."

Whereas the Respondent filed his answer on 23 November 1999;

Whereas the Applicant filed written observations on 16 December 1999;

Whereas the Applicant submitted additional documents on 30 March and 30 June 2000;

Whereas the facts of the case were set out in Judgement No. 884.

Whereas the Applicant's principal contention is:

On 28 October 1998, the daily newspaper *Le Temps* of Geneva (Switzerland) revealed the discovery of a financial scandal at the UNHCR Branch Office in Guinea-Conakry, which led to the transfer of the Representative under whom the Applicant served as Programme Officer and suffered the alleged victimization in 1994 for having exposed the "type of malpractices that had now surfaced". In view of the news story which highlights the inappropriateness of UNHCR's attitude towards the Applicant, Judgement 884 must be revised.

Whereas the Respondent's principal contention is:

Publication of a newspaper article is not a sufficient reason for revising the judgement, which remanded the case to the JAB to investigate the circumstances of the case and to review all the issues raised by the Applicant in the original application.

The Tribunal, having deliberated from 4 to 28 July 2000, now pronounces the following judgement:

I. The Applicant has submitted a double application, requesting both an interpretation and revision of the Tribunal's Judgement No. 884 rendered on 4 August 1998, by which the Tribunal remanded the case to the JAB for a re-examination of the Applicant's claims. The Applicant requests an interpretation of Judgement No. 884 with regard to two issues and further requests a revision of the same Judgement based on the assertions in an October 1998 newspaper article.

II. The Applicant seeks both an interpretation and a revision of Judgement No. 884 with regard to the denial of promotion to the L-3 level and granting a Longer-Fixed-Term Appointment in 1993.

With regard to the Applicant's request for an interpretation of Judgement No. 884, the Tribunal notes that the Statute of the Administrative Tribunal does not contain an express provision relating to the interpretation of judgements. However, as early as 1954 the International Court of Justice in an advisory opinion held that, "competence to interpret was inherent in the judicial function

(of the Tribunal)." Further, in Judgement No. 61 (1955) the Tribunal found that the competence of national and international courts to interpret their own judgements is generally recognized. Also, in Judgement No. 434, *Al-Ali* (1988) the threshold question before the Tribunal was whether an application could properly be characterized as a request for an interpretation of the Tribunal's final judgement, in which case it would be within the competence of the Tribunal, or whether the application sought relief beyond that judgement on the basis of subsequent events, in which case the application would not be within the competence of the Tribunal under article 7 of its Statute. In Judgement No. 434, the Tribunal held that:

> " ... the application may not properly be understood as a request for interpretation, and it does not even purport to be a request for revision under article 12 of its Statute. ... It follows that the application must be viewed as seeking to initiate a new proceeding for further relief, and that appeal to a JAB from a decision by the Secretary-General or consent by the Secretary-General to a direct appeal to the Tribunal, is a prerequisite to the Tribunal's competence."

Similarly, in this case it is within the Tribunal's competence to interpret and clarify. However, here the Applicant does not request an interpretation of the previous ruling but instead, in reality, seeks a pronouncement on the merits of the denial of his promotion to the L-3 level and to a Longer-Fixed-Term Appointment. The Tribunal finds that: (i) the Applicant does not request an interpretation, but rather a ruling on the merits; and (ii) it is the responsibility of the JAB to investigate the circumstances surrounding these events. (Cf. Judgement No. 884). The Tribunal holds that the request for interpretation is rejected.

III. The Applicant also requests that the Tribunal revise Judgement No. 884 based on the publication of an article in a Swiss newspaper *Le Temps*, dated 28 October 1998. The article revealed the discovery of a financial scandal at the UNHCR Branch Office in Guinea-Conakry, the duty station from which the Applicant had been reassigned.

Article 11 of the Statute of the Tribunal stipulates that the Applicant may apply to the Tribunal for a revision of a judgement on the basis of the discovery:

> "... of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence."

Accordingly, to come within the ambit of article 11, the "fact" relied upon must be a state of affairs that existed at the time the judgement was given. The newspaper article was not published until two months after the judgement was given and accordingly cannot constitute a newly discovered fact.

Furthermore, the publication of the newspaper article does not constitute a "decisive factor" which, had it been known prior to rendering the judgement, would have changed the ruling. The Tribunal remanded the case to the JAB, to review all factual circumstances raised by the Applicant, and the Tribunal did not rule on the merits of the appeal (See Judgement No. 884).

The fact that a newspaper published an article relating to the case at hand does not substitute for the review of all issues in the case by the JAB. The Applicant may submit the new documents to the JAB. If the outcome of the proceedings of the JAB are not satisfactory to the Applicant, he may appeal to the Tribunal. Therefore the Tribunal holds that the request for revision is rejected.

IV. For the foregoing reasons, the Tribunal rejects the application in its entirety.

(Signatures)

Mayer GABAY
Vice-President, presiding

Kevin HAUGH
Member

Marsha A. ECHOLS
Member

Geneva, 28 July 2000

Maritza STRUYVENBERG
Executive Secretary